UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BERKLEY GASKIN,

Plaintiff,

-against-

THE CITY OF NEW YORK, BRIAN MARTIN (Shield # 3347), and JOHN DOES,

Defendants.

-- x

ANSWER

10 CV 5473 (RMB)

JURY TRIAL DEMANDED

Defendant City of New York, by its attorney, Michael A. Cardozo, Corporation Counsel of the City of New York, for its answer to the complaint, respectfully alleges, upon information and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except admits that plaintiff purports to seek relief as stated therein.

2. Denies the allegations set forth in paragraph "2" of the complaint, except admits that plaintiff purports to bring this action as stated therein.

3. Denies the allegations set forth in paragraph "3" of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction as stated therein.

4. Denies the allegations set forth in paragraph "4" of the complaint, except admits that plaintiff purports to invoke the Court's jurisdiction as stated therein.

5. Denies the allegations set forth in paragraph "5" of the complaint, except admits that plaintiff purports to lay venue as stated therein.

6. Paragraph "6" of the complaint does not contain any averments of fact, therefore, no response is required. To the extent a response is required, defendant denies.

7. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "7" of the complaint.

8. Admits the allegations set forth in paragraph "8" of the complaint.

9. Denies the allegations set forth in paragraph "9" of the complaint, except respectfully refers the Court to the New York City Charter for a recitation of duties of the New York City Police Department and the relationship between the City of New York and the New York City Police Department.

10. Denies the allegations set forth in paragraph "10" of the complaint, except admits that Brian Martin is employed by the City of New York in its police department as a detective.

11. Denies the allegations set forth in paragraph "11" of the complaint, except admits Brian Martin is employed by the City of New York in its police department as a detective.

12. Denies the allegations set forth in the first paragraph "12" of the complaint, except denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning defendant Does.

13. Denies the allegations set forth in the second paragraph "13" of the complaint, except denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning plaintiff's determination of actual names of defendant Does.

14. Denies the allegations set forth in paragraph "14" of the complaint, except respectfully refers all questions of law to the Court. Defendant further denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning the Does defendants.

15. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "15" of the complaint.

16. Denies the allegations set forth in paragraph "16" of the complaint, except admits that plaintiff was handcuffed and arrested.

17. Denies the allegations set forth in paragraph "17" of the complaint, except admits plaintiff was transported to a police precinct.

18. Denies the allegations set forth in paragraph "18" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning plaintiff's transport to Kings County Criminal Court and his arraignment and bail.

19. Denies the allegations set forth in paragraph "19" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning any meeting with the Kings County District Attorney's office.

20. Denies the allegations set forth in paragraph "20" of the complaint.

21. Denies the allegations set forth in paragraph "21" of the complaint.

22. Denies the allegations set forth in paragraph "23" of the complaint.

23. Denies the allegations set forth in paragraph "24" of the complaint.

24. Denies the allegations set forth in paragraph "25" of the complaint, except denies knowledge or information sufficient to form a belief as to the truth of the allegations concerning any actions taken by Administrative Law Judge Casey and the date plaintiff was released from prison.

25. Denies the allegations set forth in paragraph "26" of the complaint.

26. Denies the allegations set forth in paragraph "27" of the complaint, except denies knowledge and information sufficient to form a belief as to the truth of the allegations concerning the disposition of the criminal charges.

27. Denies the allegations set forth in paragraph "28" of the complaint.

28. In response to paragraph "29" of the complaint, defendant repeats and realleges its responses to the complaint as set forth in paragraphs "1" through "27" of its answer, as if fully set forth herein.

29. Denies the allegations set forth in paragraph "30" of the complaint.

30. Denies the allegations set forth in paragraph "31" of the complaint.

31. Denies the allegations set forth in paragraph "32" of the complaint.

32. In response to paragraph "33" of the complaint, defendant repeats and realleges its responses to the complaint as set forth in paragraphs "1" through "31" of its answer, as if fully set forth herein.

33. Denies the allegations set forth in paragraph "34" of the complaint.

34. Denies the allegations set forth in paragraph "35" of the complaint.

35. In response to paragraph "36" of the complaint, defendant repeats and realleges its responses to the complaint as set forth in paragraphs "1" through "34" of its answer, as if fully set forth herein.

36. Denies the allegations set forth in paragraph "37" of the complaint.

37. Denies the allegations set forth in paragraph "38" of the complaint.

38. In response to paragraph "39" of the complaint, defendant repeats and realleges its responses to the complaint as set forth in paragraphs "1" through "28" of its answer, as if fully set forth herein.

39. Denies the allegations set forth in paragraph "40" of the complaint.

40. In response to paragraph "41" of the complaint, defendant repeats and realleges its responses to the complaint as set forth in paragraphs "1" through "28" of its answer, as if fully set forth herein.

41. Denies the allegations set forth in paragraph "42" of the complaint.

42. Denies the allegations set forth in paragraph "43" of the complaint.

43. Denies the allegations set forth in paragraph "44" of the complaint.

44. Denies the allegations set forth in paragraph "45" of the complaint and all of its subparts.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

45. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

46. At all times relevant to the acts alleged in the complaint, the duties and functions of the municipal defendant officials entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant City has governmental immunity from liability.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

47. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct or the culpable or negligent conduct of other parties for whom the City of New York is not responsible, and was not the proximate result of any act of the defendant.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

48. Defendant City of New York has not violated any rights, privileges or immunities under the Constitution or laws of the United States or the State of New York or any political subdivision thereof, or any act of Congress providing for the protection of civil rights.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

49. There was probable cause for plaintiff's arrest, detention, and prosecution.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

50. Punitive damages are not available against defendant City of New York.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

51. Plaintiff provoked any incident.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE:

52. Plaintiff's claims may be barred in whole or in part by plaintiff's failure to comply with all conditions precedent to suit.

AS AND FOR A NINTH AFFIRMATIVE DEFENSE:

53. To the extent plaintiff asserts state law claims against defendant, such claims should be barred by the doctrine of immunity for judgmental errors in the exercise of governmental functions.

WHEREFORE, defendant the City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
September 24, 2010

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
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By: ______________________________
Diep Nguyen
Assistant Corporation Counsel

cc: Christopher Wright (By ECF)
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305 Broadway, 14th Floor
New York, New York 10007

Docket No. 10 CV 5473 (RMB)

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SOUTHERN DISTRICT OF NEW YORK

BERKLEY GASKIN,

Plaintiff,

-against-

THE CITY OF NEW YORK, BRIAN MARTIN (Shield # 3347), and JOHN DOES,

Defendants.

ANSWER TO THE COMPLAINT ON BEHALF OF DEFENDANT CITY OF NEW YORK

MICHAEL A. CARDOZO
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Attorney for Defendant City of New York
100 Church Street
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Of Counsel: Diep Nguyen
Tel: (212) 341-9848

Due and timely service is hereby admitted.

New York, N.Y. ...., *2010*

.... *Esq.*

Attorney for ....